

Public Records Act

Redistricting Advisory Committee

February 2011



The Critical Points

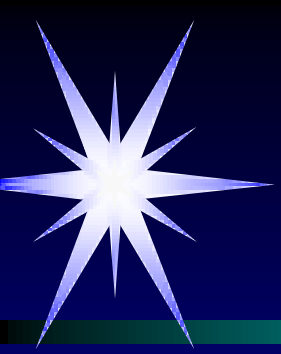
Records or documents relating to redistricting are “public records” by definition. Few “public records” are exempt from disclosure.

County Counsel will handle all Public Records Act requests.



Legal Sources

- **California Constitution (Art. 1, § 3)**
- **Statutes (Public Records Act, Gov't Code § 6250 et seq.)**
- **Case law**



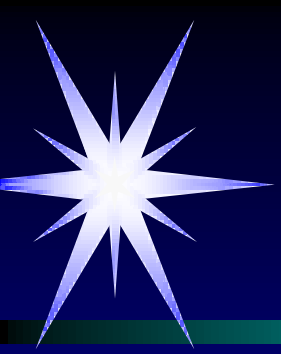
California Constitution, Art. 1, § 3 (Proposition 59)

(b)(1) “The people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.”



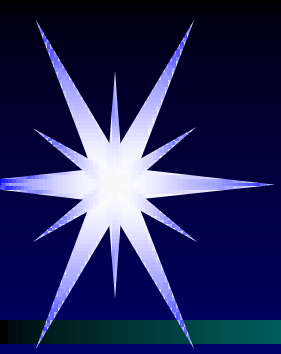
California Constitution, Art. 1, § 3

(b)(2) Provides that statutes are to be broadly construed if they further the right of access, and narrowly construed if they limit the right of access.



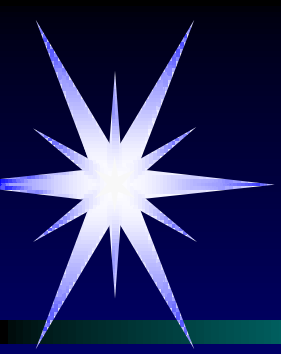
California Constitution, Art. 1, § 3

(b)(3) Does not supercede or modify the State constitutional right of privacy, or affect the construction of any statute, court rule, or other authority which protects the right to privacy.



California Constitution, Art. 1, § 3

(b)(5) Does not repeal or nullify any constitutional or statutory exception to the right of access to public records in effect on its effective date.



California Constitution, Art. 1, § 3

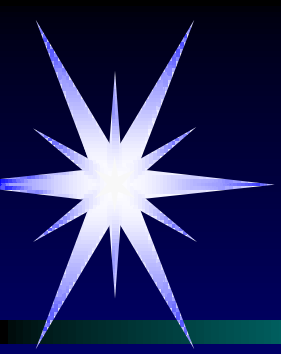
The principle of access “is now enshrined in the state Constitution” *Int’l Fed. of Prof. & Technical Engineers, Local 21, AFL-CIO v. Superior Court*, 42 Cal. 4th 319 (2007)

Proposition 59 is simply a constitutionalization of the CPRA. As such, the proposition did not change existing law except as can be gleaned from its language. *Sutter's Place Inc. v. Superior Court*, 161 Cal. App. 4th 1370, 1382 (2008)



General legal concepts: authorities

- **California Constitution (Art. 1, § 3)**
- **Statutes (Public Records Act, Gov't Code § 6250 et seq.)**
- **Case Law**



California Public Records Act

Gov't Code § 6250 et seq.

§ 6250 – Access vs. Privacy

§ 6252 – Definitions

§ 6253 – Procedures, duties

§§ 6254 – Exemptions

§ 6255 – Justifying non-disclosure; “catch-all”

§ 6258, 6259 – Legal action



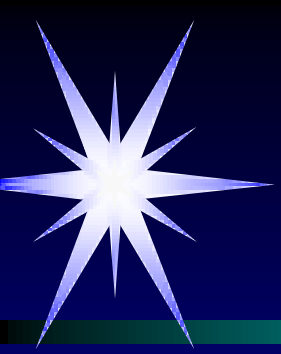
California Public Records Act

Gov't Code § 6250 et seq.

Access vs. Privacy

§ 6250

“...the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.”



California Public Records Act

Gov't Code § 6250 et seq.

§ 6250 – Access vs. Privacy

§ 6252 – Definitions

§ 6253 – Procedures, duties

§§ 6254 – Exemptions

§ 6255 – Justifying non-disclosure; “catch-all”

§§ 6258, 6259 – Legal action

6252 - What IS a "public record" under the Public Records Act?

"...any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics."





6252 - What IS a "public record" under the Public Records Act?

" 'writing'... regardless of physical form or characteristics" means ... virtually every way information can be kept: papers, maps, tapes, computer records, e-mails





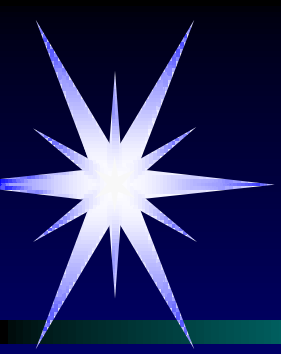
6252 - What IS a "public record" under the Public Records Act?

Only purely personal information unrelated to conduct of public's business is exempt.

Bottom line – Nearly **EVERYTHING** we have is a “public record” by definition



The question is almost always whether it is **EXEMPT** from disclosure.



California Public Records Act

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§ 6253 Procedures, duties

COUNTY COUNSEL WILL HANDLE

Who gets access?

"Every person" has right to inspect/copy
GC 6253

If access is to be restricted, it will be
based on the document, **not** the person
requesting...



§ 6253 Procedures, duties

...and **not** the reason **WHY** they want the records:

Access to public records may not be limited or prohibited based on the purpose for which they are requested. Gov't Code § 6257.5



§ 6253 Procedures, duties

When and where do they get access?

Open to inspection at all times during office hours **subject to reasonable regulation of access** [§ 6253(a)]



Access to Records

The entire official record of the Redistricting Advisory Committee will be on the website, and the public will have 24-hour access.

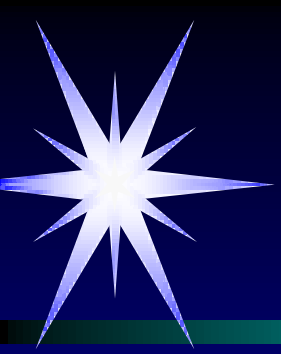
Redistricting materials gathered by individual RAC members are public records. If there is a request, notify County Counsel. Counsel will handle.



Emails are public records

Committee member emails relating to
redistricting are public records

The County has established an official email
account for communications with the public.



California Public Records Act

Gov't Code § 6250 et seq.

§ 6250 – Access vs. Privacy

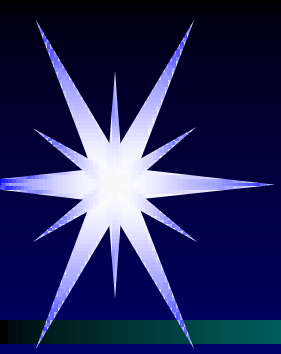
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Public Records Act

Exemptions are “narrowly construed”

Waiver of Exemptions

With very limited exceptions, if a document that is otherwise exempt is disclosed, *even by mistake*, any applicable exemption is waived and may not later be asserted

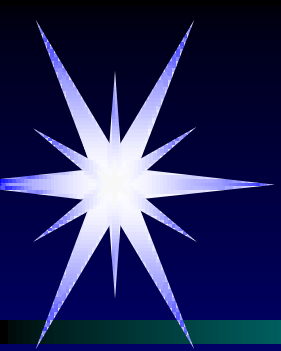
Gov't Code 6254.5



§ 6254(a) Preliminary drafts, notes, or inter-agency or intra-agency memoranda...

not retained by the agency in the ordinary course of business...

provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.



§ 6254(k)

- § 6254(k) – exempt under state or federal law ... This is the “incorporation” exemption, incorporating other codes
- Attorney-client communications



California Public Records Act

Gov't Code § 6250 et seq.

§ 6250 – Access vs. Privacy

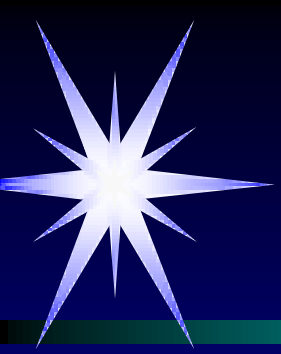
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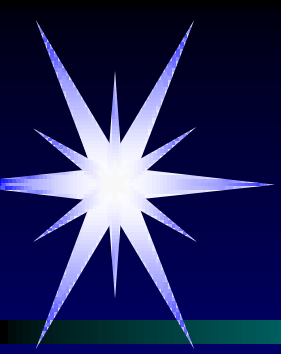


§ 6255

Justification and “catch-all”

Two elements: Justification and “catch-all” exemption

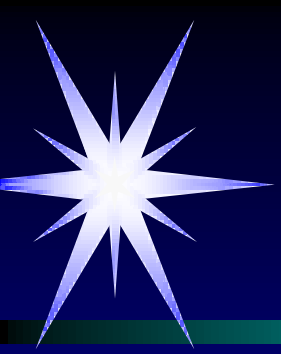
- (1) The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter (**meaning cite the specific exemption**) or
- (2) **That on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure... (meaning explain how the balance favors non-disclosure)**



§ 6255 “Catch-all”

Balancing test (if used rather than specific exemption) requires *clear overbalance* in favor of confidentiality.

If records relate to conduct of public business
= presumed public interest in disclosure...

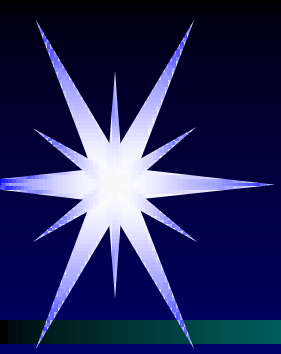


§ 6255

“Justification for withholding of records”

The balancing test “catch-all” exemption is

- ✓ Narrowly construed
- ✓ Not applicable if a more specific statute applies.



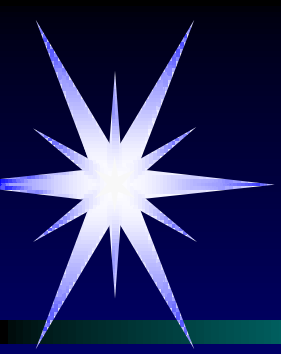
§ 6255

“Justification for withholding of records”

balancing

“Weight” of the public's interest in disclosure depends on the gravity of the government action at issue and how directly the sought-after disclosure would illuminate that government action.

Citizens for a Better Environment v. Department of Food & Agriculture, 171 Cal. App. 3d 704, 715 (1985)



§ 6255

“Justification for withholding; catch-all”

deliberative process privilege

Information that would expose an agency's
decision-making process *and* thereby
discourage candid discussion



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Court Actions To Enforce The Public Records Act

§§ 6258, 6259

**THE COUNTY CAN BE SUED FOR
FAILING TO TIMELY RESPOND OR
NOT RESPONDING PROPERLY**



ASK COUNTY COUNSEL